

STATE OF MICHIGAN  
IN THE 6TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DANA NESSEL, ATTORNEY GENERAL OF  
THE STATE OF MICHIGAN, *ex rel*  
The People of the State of Michigan,

Petitioner,

v

SMOKEHOUSE DISTRIBUTION,

Respondent.

No. 20-181665-CZ

HON. NANCI GRANT

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**ASSURANCE OF VOLUNTARY COMPLIANCE**

Dana Nessel, Attorney General of the State of Michigan, on behalf of the State of Michigan, and Smokehouse Distribution (Smokehouse), hereby execute and agree to be bound by this Assurance of Voluntary Compliance (Assurance).

This Assurance concerns the resolution of alleged violations of the Michigan Consumer Protection Act (MCPA), 1976 PA 331, as amended, MCL 445.901 *et seq.* Smokehouse agrees not to contest any terms of this Assurance.

The parties agree that the entry into this Assurance by Smokehouse is not an admission or agreement with respect to any legal or factual issues dealt with in this

Agreement, with Smokehouse having denied both violations and liability.

THEREFORE, the parties agree as follows:

**I. Jurisdiction**

1.1 The Department of Attorney General (the Department) has jurisdiction over the subject matter of this Assurance pursuant to MCL 445.905 and 445.910. Smokehouse waives all objections and defenses that it may have as to the jurisdiction of the Department over the matters covered by this Assurance.

**II. Parties Bound**

2.1 This Assurance binds Smokehouse, whether acting through associates, principals, officers, directors, employees, representatives, successors or assigns, or through any other subsidiary, corporation, assumed name or business entity. Smokehouse is responsible for compliance with the terms of this Assurance, and must ensure that all employees, contractors, subcontractors, agents and representatives comply with the terms of this Assurance.

**III. Definitions**

3.1 "Smokehouse" refers to Discount Smoking Products, Inc., Smokehouse Distribution, Beamer Company, and all employees; agents; representatives; and contractors for Smokehouse Distribution.

3.2 "Assurance" means this Assurance of Voluntary Compliance.

3.3 "COD" means the Michigan Department of Attorney General, Corporate Oversight Division.

3.4 "Ex Parte Petition" means the Ex Parte Petition for Civil

Investigative Subpoenas filed with the Oakland County Circuit Court on June 10, 2020.

3.5 “Parties” means COD and Smokehouse, collectively.

3.6 All other terms shall have the meaning specifically defined in the MCPA.

#### **IV. COD’s informal inquiry related to Smokehouse.**

4.1 The Attorney General first learned of the existence of Smokehouse when a consumer complaint was filed on April 11, 2020. Smokehouse is in the business of selling smoking products and accessories. The complainant stated that paper face masks were being sold 2 for \$18.00 and gloves for \$28.00 per box on a website called [www.beamersmoke.com](http://www.beamersmoke.com). On April 30, 2020, an Investigator from the Attorney General’s Office visited the URL provided in the consumer complaint. The Investigator spoke with a male who identified himself as “Randy”, or Randy Salem, the resident agent and President of Smokehouse. Mr. Salem told the Investigator that face masks were currently sold on the website for 2 for \$9.99. When addressing the 2 face mask for \$18.00 pricing, Salem said this was a mistake. Further, Mr. Salem continued that after the pricing “error” was caught, the price for two face masks went down to \$11.99, and then to \$9.99. When asked by the Investigator for the justification of these prices, Mr. Salem listed several overhead costs, such as a website fee and costs to keep the website up and running.

4.2 After this conversation, the Investigator and Mr. Salem continued to correspond over email. When the Investigator asked for information on Smokehouse’s

costs to acquire the masks and overall profit margin explanation, Mr. Salem provided information purporting to justify the costs.

4.3 Furthermore, Mr. Salem sent an Invoice after a follow up request of the Attorney General Investigator. This Invoice demonstrates that Smokehouse placed an order for 18,000 face masks on March 30, 2020 at a cost of 55 cents per mask. Mr. Salem told the Investigator that Smokehouse made only 17 face mask sales.

4.4 On May 8, 2020, the Attorney General sent Smokehouse a Notice of Intended Action citing alleged violations of the Michigan Consumer Protection Act. The Attorney General then filed an Ex Parte Petition for Civil Investigative Subpoenas with the Oakland County Circuit Court on June 10, 2020, which the Court ordered on June 23, 2020. Smokehouse responded to the subpoena and provided documentation to the Attorney General.

4.5 This complaint and resulting information implicate the Michigan Consumer Protection Act. In relevant part, Section 1 of the Michigan Consumer Protection Act prohibits:

- (n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.
- (z) Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold.
- (aa) Causing coercion and duress as the result of the time and nature of a sales presentation.

During the Investigation, the Attorney General learned that Smokehouse sells gloves as part of its typical inventory. The Attorney General also learned that

Smokehouse began selling face masks specifically during the COVID-19 pandemic because it knew face masks were in demand by consumers. In examining sales records provided by Smokehouse, the Attorney General determined that face masks were sold at several different prices throughout April 2020 on several different sales platforms, including its own website and Amazon. Furthermore, the Attorney General learned that Smokehouse returned some of its face mask inventory after the Attorney General took action because it did not want any further negative attention.

4.6 In entering into this Assurance, the mutual objective of the parties is to resolve, without litigation, COD's potential claims under the MCPA for preliminary and permanent injunctive relief, as well as potential claims for payment of damages and reimbursement of the Department's costs and expenses related to the informal inquiry. The entry into this Agreement by Smokehouse is not an admission of liability with respect to the particular claims of any individual consumer. Smokehouse is offering this Assurance to avoid the time and expense of litigating this matter.

## **V. Implementation of Compliance Measures**

5.1 Through the investigation, COD asserts Smokehouse committed MCPA violations. COD concluded that Smokehouse sold face masks at prices that were grossly inflated during the Coronavirus pandemic, and attempted to lower the prices or return inventory in an effort to avoid this becoming widely known.

5.2 Smokehouse hereby provides assurance that the marketing and sale of any face masks on its website or store fronts in the future will be limited, exclusively,



to the hemp industry for the manufacture, handling and distribution of hemp products. The face masks will be marketed in conjunction with gloves for the handling of hemp and will not be marketed or distributed for medical or COVID-19 purposes. Further, Smokehouse gives assurance to the Attorney General that it will comply with the requirements of the Michigan Consumer Protection Act, MCL 445.901 *et seq.*

5.3 Smokehouse understands that by accepting these assurances, the Attorney General and COD are making no representation as to its adequacy in selling products, or compliance with the MCPA. In other words, if the Attorney General receives consumer complaints or other information in the future suggesting that Smokehouse has violated, or is violating, the MCPA, Smokehouse's implementation of these assurances shall not deprive COD from taking any appropriate action described in these laws.

5.4 Pursuant to MCL 445.906(1), this Assurance shall not constitute an admission of guilt, and shall not be introduced in any other proceeding, unless it is in regard to a violation of this Assurance.

## **VI. Financial obligations**

6.1 Smokehouse agrees to resolve this matter, and avoid the need for litigation, through making a one-time payment to the Attorney General's COD in the amount of \$2,000.00. This payment will be accomplished through a check or money order made payable to the State of Michigan. The payment is due to the Attorney General within 21 days of the effective date of this Assurance. It is being made to compensate the citizens of Michigan for costs associated with the investigation giving

rise to this Assurance and resultant compliance monitoring costs.

6.2 Additionally, Smokehouse agrees to provide a full refund to each consumer who purchased face masks through its website during the month of April 2020. These refunds will be given directly to all consumers listed on Smokehouse's "BigCommerce Transactions March 30, 2020 through May 4, 2020" spreadsheet, attached to this Assurance as Attachment 1. The refunds will be effectuated by issuance of a check or money order directly to the consumer. These refunds will be provided within sixty (60) days of this Assurance, and Smokehouse will provide proof of all refunds completed to the Attorney General by providing copies of the refund checks and envelopes sent to the consumers within ninety (90) days of this Assurance.

6.3 Should the payment to the Attorney General under this agreement not be timely made, an additional \$5 per day shall be added for each calendar day of delinquency. COD will give notice of the delinquency and resultant costs to Smokehouse by email and first-class mail. Smokehouse understands the COD reserves the right to commence a lawsuit for collection of the obligations under this agreement should any payment be more than fourteen days late. Should the refunds to individual consumers under this agreement not be timely made, an additional \$5 per day per consumer shall be added for each calendar day of delinquency.

6.4 The payment to the State of Michigan under Section 6.1 shall be sent to the attention of Andrea Moua, Assistant Attorney General, Corporate Oversight Division, P.O. Box 30736, Lansing, MI 48909.

## **VII. Release**

7.1 Upon the Effective Date, the COD hereby releases and discharges Smokehouse and any of its entities, affiliates, subsidiaries, predecessors, successors or assigns, and each and all of its past or present officers, directors, associates, shareholders, controlling persons, representatives, employees, attorneys, counselors, advisors, or agents, from any and all civil or administrative claims, demands, rights, actions, causes of action, and liabilities, of any kind or nature whatsoever, that are related to sale of face masks prior to the filing of the Ex Parte Petition. This release does not apply to Smokehouse's sale of any other products. Nothing herein shall be construed as a waiver or release of claims asserted or that may be asserted by individual consumers directly against Smokehouse.

## **VIII. General Provisions**

8.1 This Assurance is binding upon, inures to the benefit of, and applies to the parties and their successors-in-interest. This Assurance does not bind any Division of the Michigan Department of the Attorney General other than COD. Nor does this Assurance bind any other agencies, boards, commissions, departments, or offices of the State of Michigan.

8.2 This Assurance does not affect, expand or limit the rights of any private party to pursue any available remedy or remedies pursuant to applicable law, except that any common law right of set off for the refunds provided pursuant to Section 6.2 is still applicable. Further, this Assurance does not create any private right or cause of action to any third party.



8.3 This Assurance does not constitute an approval by the Attorney General of any of Smokehouse's business practices and Smokehouse must not make any representation to the contrary.

8.4 No change or modification of this Assurance is valid unless in writing and signed by all parties.

8.5 Within three business days of the Effective Date of this Assurance, COD will file a copy of this Assurance with the Oakland County Circuit Court in the above-captioned matter, as well as with the Ingham County Circuit Court as anticipated by MCL 445.905.

8.6 Unless a temporary restraining order is sought, COD will make reasonable efforts to provide written notice to Smokehouse and its counsel of record in this matter in the event that COD believes Smokehouse to be in noncompliance with any provision of this Assurance, setting forth the basis for such belief.


## **IX. Signatories**

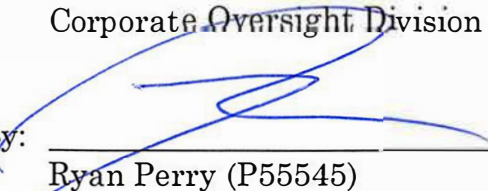
9.1 Each undersigned individual represents and warrants that he or she is fully authorized by the party he or she represents to enter into this Assurance and to legally bind such party to the terms and conditions of this Assurance. If this Assurance is signed by a corporate officer or representative, by signing you acknowledge that you have had the opportunity to consult with an attorney acting on behalf of the corporation before executing this document.

## **X. Effective Date**

10.1 The effective date of this Assurance is the date upon which the COD

representative signs this Assurance. Electronic signatures, as confirmed through electronic mail messages, shall be deemed sufficient and binding for purposes of this Assurance.

Dated: December 10, 2020 By:   
Andrea Moua (P83126)  
Assistant Attorney General  
Michigan Dep't of Attorney General  
Corporate Oversight Division

Dated: 12/10/20 By:   
Ryan Perry (P55545)  
Attorney for Respondent